No. 2648

United States
Circuit Court of Appeals

For the Ninth Circuit

H. C. STRONG,

Appellant,

vs.

C. A. HOLMES,

Appellee.

In the Matter of the Petition of H. C. STRONG to Limit His Liability for Certain Claims Made Against Him as Owner of the Steamship "ALKI."

UPON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA, DIVISION NO. 1.

BRIEF OF APPELLANT

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STATEMENT OF THE CASE.

This is an appeal from an order of the lower court refusing to entertain appellant's petition for limitation of liability on the ground that it was not filed in the proper district court. The allegations of the petition may be substantially set forth in narrative form as follows:

The appellant being at all times mentioned a resident of Ketchikan, Alaska, owned the Steamer "Alki" upon which the appellee was injured at Ketchikan, in 1912, by the falling over of some lumber in the hold. The appellee brought suit against the appellant in the Courts of the State of Washington, and secured a judgment, upon which judgment he subsequently secured a further judgment in the District Court at Juneau, Alaska, in cause No. 1130A. The appellant filing his petition, as permitted to do by Admiralty Rule 56, to offer to enter into a stipulation for the appraised value of his interest in the vessel and her pending freight. He prayed that the collection of the Alaska judgment might be stayed until the petition might be heard; that all claimants and especially the appellee, might be cited to appear; that the court would adjudicate their claims, and having done so, would enjoin the prosecution of such claims or further claims in other courts. (Ap. 1-5).

Upon the presentation of the petition an order was entered fixing a day for hearing that the appellee might appear and object to the jurisdiction, or to the sufficiency of the petition. (Ap. 7). The appellee appeared and objected to the jurisdiction. The objection was sustained and the petition dismissed upon the ground that it could be entertained only by that District Court of the United States sitting within the State of Washington. (Ap. 8-9).

It will be noted that the order does not deny the jurisdiction of the Federal Courts as such, but asserts that the District Court of Alaska is not the proper Federal Court to entertain the matter. That question is subject to review by this court as is shown by the case of *United States v. Larkin,* 208 U. S. 333; 52 L. Ed. 517, and is in fact the sole question for determination on this appeal.

ASSIGNMENT OF ERRORS.

I.

The Court erred in entering an order herein on July 29, 1915, refusing to exercise jurisdiction in the premises and dismissing the petition of libelant and petitioner for limitation of his liability, on the ground that the District Court for the District of Alaska, Division No. One, at Juneau, was without jurisdiction to entertain said petition.

II.

The Court erred in sustaining the oral objections of the claimant, C. A. Holmes, entering an order dismissing the petition and refusing to examine the matter on the merits. (Ap. 12).

ARGUMENT.

The determination of this question must largely depend upon the construction of Admiralty Rule 57. The trial judge rested his opinion entirely upon a dictum construing that rule. (Ap. 9). For these reasons it is proper to note its history and purpose. In one of the earliest decisions concerning the Limitation Acts, the Supreme Court said:

> "The Act does not state what Court shall be resorted to, nor what proceedings shall be taken; * * * For aiding parties in this behalf and facilitating procedings in the District Court we have prepared some rules which will be announced at an early day."
>
> *Norwich & N. Y. Trans. Co. v. Wright,* 80 U. S. 104; 20 L. Ed. 585.

These rules were announced at a subsequent day of the same term and may be found in 13 Wall, 12, and 20 L. Ed. 926. Referring to them subsequently the Court said:

> "In promulgating the rules referred to, this Court expressed its deliberate judgment as to the proper mode of proceeding on the part of ship owners for the purpose of having their rights under the Act declared and settled by the definite decree of a competent court, which should be binding upon all persons interested and protect the ship owner from being harassed by litigation in other tribunals. Unless some proceedings of this kind were adopted, which should bring all parties interested into one

> litigation, and all the claimants into concourse for a pro rata distribution of the common fund, it is manifest that in most cases the benefits of the act could never be realized."
>
> *Prov. and N. Y. S. S. Co. v. Hill Mfg. Co.*, 109 U. S. 578; 27 L. Ed. 1044.

The rules then, were adopted for the purpose of facilitating proceedings and the end sought was to as far as possible "bring all the parties interested into one litigation."

Rule 57 has been materially supplemented since Judge Blodgett announced the dictum which was made the basis of the lower court's decision. The portion which Judge Blodgett referred to is still, however, a part of the rule. It reads as follows:

> "The said libel or petition shall be filed, and the said proceeding had in any District Court of the United tSates in which said ship or vessel may be libeled to answer for any embezzlement, loss, destruction, damage, or injury; or if such ship or vessel be not libeled, then in the District Court for any district in which the said owner or owners may be sued in that behalf."
>
> 130 U. S. 705; 32 L. Ed. 1085.

The contention was made before Judge Blodgett that the above language precluded an owner from filing a petition at all until a suit had been commenced either against his vessel or himself. In refuting that he used the words quoted by the lower court in his opinion. (Ap. 9). His expression was as follows:

> "But the Court only intended to say that if the owner delayed such proceedings until a suit had been commenced, then he should commence such proceedings in the District Court where suit was commenced."
>
> *The Alpena,* 8 Fed. 285.

Bearing in mind the language of the rule as well as its known purpose, this dictum is not justifiable if taken as literally as the lower court appears to have taken it. The rule says nothing about the "commencement" of a suit. It merely says "in the District Court in which the said owner or owners may be sued in that behalf" and the court in making the rule clearly meant that the petitioner should file his petition in the District in which a claim was at that time being pressed. The purpose being to bring claim and petition in as close conjunctivity as possible.

In this case as the petition shows the owner resided in Alaska, and it was there that the appellee's claim arose. He prosecuted it in the Courts of the State of Washington, then came to Alaska and sued the appellant in his own jurisdiction, suing, however, on the Washington judgment. The appellant filed his petition in the District Court where he was sued. The claim was not only being pressed in the same District, but before the same District Court. The spirit of the rule has been entirely complied with. It would not have been

had the appellant filed his petition in Washington, when the proceedings he prayed to have enjoined were being carried on in Alaska.

The spirit of the rule certainly did not require Mr. Strong to leave his own jurisdiction and go a thousand miles to the State of Washington in order to secure relief against a proceedings being pressed against himself in the District Court of his residence for it was those proceedings against which he sought relief.

Nor did the letter of the law require it. In fact in filing his petition in the Alaska Court the appellant complied with the strict letter of the law. The rule says that the owner may file his petition:

> "in the District Court for any district in which the said owner or owners may be sued in that behalf."

That is, he may file his suit in any District Court in which he is sued by a claimant on behalf of loss or damage. Was not the petitioner being sued by the claimant in behalf of loss or damage in the District Court of Alaska when he filed his petition? It is technically claimed that that suit was not in behalf of claimants loss or damage, but in behalf of the Washington judgment and that the owner was sued in behalf of the loss and damage only in Washington, and accordingly he could file his petition in no other Court than a District Court sitting in Washington. From this line of reasoning it

would follow that the appellant could not limit his liability at all for no court could enjoin the collection of the Alaska judgment unless it was a claim against the owner in behalf of loss or damage suffered. In other words if the suit of *C. A. Holmes v. H. C. Strong,* No. 1130 A, in the District Court of Alaska is not in behalf of loss or damage received on appellant's vessel, no court could interfere with it at the petition of the owner H. C. Strong seeking to limit his liability for said loss or damage. If this is not a claim on behalf of loss or damage how could it be limited at all?

We see no reason in any event why Court Rules should receive a stricter construction than the law the operation of which they were designed to facilitate. The Supreme Court said of the law itself in one of its earlier decisions:

> "Nevertheless, the practical value of the law will largely depend on the manner in which it is administered. If the courts having the execution of it administer it in a spirit of fairness with the view of giving the shipowners the full benefit of the immunities intended to be secured by it, the encouragement it will afford to commercial operations, as before stated will be of the last importance, but if it is administered with the tight and grudging hand construing every clause most unfavorably against the shipowner and allowing as little as possible to operate in his favor the law will hardly be worth the trouble of its enactment."

Prov. and N. Y. S. S. Co. v. Hill Mfg. Co., 109 U. S. 578; 25 L. Ed. at 1042.

Quoted with approval in 210 U. S. 121; 52 L. Ed. 986.

In the administration of the law itself it has never been held that the claim merges in a judgment. A judgment on a claim is itself a claim in behalf of loss or damage, as is well established by the following authorities:

"Under the American practice he (the owner) may contest his liability for any damages at all, fight that through all courts, and if defeated take advantage of the statute."

Hughes on Admiralty, Sec. 172.

"There seems to be no limit of time the expiration of which will cut off the owner of the vessel from taking advantage of the provisions of the statute. * * * He may wait until he is sued and defend the case and appeal from an adverse verdict, and after affirmance by the appellate court, still file his libel for limitation of his liability."

Benedict's Admiralty (4th Ed.), Sec. 520.

See also:

The Benefactor, 103 U. S. 244; 26 L. Ed. 351.

Mon. Rw. Consol. Coal & Coke Co. v. Hurst, 200 F. 711.

The Washington judgment was therefore subject to limitation. Accordingly it must be considered

as a claim on behalf of loss or damage. The suit in the District Court of Alaska No. 1130 A was therefore a suit in behalf of loss or damage and in filing his petition in the same District Court the appellant complied with Rule 57.

We submit that both with the spirit and letter of the Rule the appellant properly filed his petition in the District Court of the District in which he lived in which the loss occurred and in which he was sued in behalf thereof.

We therefore respectfully pray that the order of the lower court be reversed.

J. S. ROBINSON,
H. B. JONES.
IRA BRONSON,